

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1523 of 1996

with

CIVIL APPLICATION No 2640 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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SHANTINIKITEN COOPERATIVE HOUSING SOCIETY LTD

Versus

K H RATHOD

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Appearance:

1. Special Civil Application No. 1523 of 1996  
MR BS PATEL for Petitioners  
Mr. Kamal M. Mehta for Respondent No. 1, 2, 3  
Mr. B.M. Mangukia for Respondent Nos. 4 to 15
2. Civil ApplicationNo 2640 of 1996  
MR BM MANGUKIYA for Petitioners  
MR BS PATEL for Respondent No. 1  
Mr. Kamal M.Mehta for Respondent 1 to 3

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 08/07/97

ORAL JUDGEMENT

1. The present petition under Article 227 of the Constitution of India is filed by a Registered Co-operative Society and one Devjibhai Kacharabhai Parmar against the District Registrar of Co-operative Society as well as appellate authority, inter alia, praying for appropriate writ quashing and setting aside the order at Annexure - A dated 4.4.1995, passed by the District Registrar, appointing respondent No.3 as custodian of the society under Sec. 74(D) of the Gujarat Co-operative Societies Act, 1961. It appears that there is one registered co-operative society known as "Shantiniketan Cooperative Housing Society Limited", Ranip, Ahmedabad bearing Registration No. GH/7264 and it was registered on 28th August, 1978. Some of the members of the said co-operative society by letter dated 26th February, 1995 represented to the District Registrar that since 30th June, 1994, no Annual General Meeting was convened till the date of the complaint. It was also complained that consistent with the byelaws of the society, in the Annual General Meeting every year the members of the Managing Committee were not changed and that members were not given the regular stamp receipt for the amount deposited by them. It was also complained that annual accounts of the society were not being published and approved or sanctioned consistent with the byelaws every year in the Annual General Meeting and that Secretary of the society has illegally and unauthorisedly encroached upon the common plot of the society. Pursuant to the said complaint, a notice was issued to the society dated 3rd of April, 1995 bearing No. PRM/B-2/383/95 and explanation of the society was called for and no explanation and/or reply was received from the society. On the spot investigation was also carried out and from the on the spot investigation which was conducted by the Assistant Co-operative Officer as well as from the statements recorded by him, it transpired that those persons of the members of the Managing Committee of the year 1993-94 continued to be the members of the Managing Committee for the year 1994-95. It was, therefore, found that allegations No. 1 and 2 made against the society and its management were, prima facie, correct. It was also found that Annual General Meeting of the Society under Section 77 of the byelaws was lastly called on 30th June, 1994 and thereafter no Annual General Meeting was called. It was also found that no prior permission or

sanction of the District Registrar was obtained for not convening the Annual General Meeting nor was any extension of time sought. It was also found that the Managing Committee of the society was also not constituted in accordance with the bylaw and, therefore, with a view to avoiding creation of any illegality in the management of the society, it was necessary to appoint custodian and accordingly in exercise of the power afore stated the Managing Committee and its office bearers were removed from the respective posts and one H.K. Kapadia was appointed as custodian. Such order was passed by District Registrar consistent with the provisions of the said Act.

2. Being aggrieved by the aforesaid order of appointment of custodian passed in accordance with law and after providing an opportunity to the society to explain its conduct and more particularly the charges levelled against the society, a revision application was preferred by the Secretary of the said Society to Additional Registrar, Co-operative Society (Appeal), Gujarat State, Gandhinagar, being Revision Application No. 23 of 1995. Such revision appears to have been preferred under Section 155 of the said Act and after hearing the respective parties more particularly the society, the Additional Registrar (Appeal) Cooperative Societies, Gujarat State, by judgment and order dated 22 of February, 1996 decided the revision and after setting out the details of the charges levelled against the society and its Managing Committee and the reasons as to why the custodian came to be appointed under Sec. 74 (GH) of the said Act, he came to the conclusion that the present Managing Committee of the society had no legal and moral authority to continue the management of the society.

3. In the reasoned order, the Additional Registrar (Appeals) found that on six allegations made, admittedly, allegations No. 1 and 2 were established as Annual General Meeting of the society was not called consistent with the byelaw and that members of the Managing Committee were not appointed/constituted. The contention of the majority group of the society that the rest of the grievances being grievance Nos. 3 to 6 were not examined and that with respect to such grievances the management of the society was not given an opportunity of being heard, it was also found that in fact, out of 5 members, 4 members were not the lawful members and not entitled to carry on the management. It was also found that a responsible person was sent for on the spot investigation who has recorded the statement of the Secretary of the

society and has submitted the report of on the spot investigation. It could not therefore be said that the petitioner society was unaware of any of the allegations or that the order came to be passed as a bolt from the blue by way of an action. He also found that the Managing Committee was not legally entitled to run the management and, therefore, the order passed by the District Register appointing the custodian was just and proper, legal and valid and in total compliance with the rules of natural justice.

4. Being aggrieved by such order passed in appeal, the petitioner society has approached this court under Article 227 of the Constitution of India and Mr. B.S. Patel, for the petitioner challenged the said order, inter alia, on the ground that the same was inconsistent with the rules of natural justice as no opportunity of being heard was provided to the Managing Committee of the society before appointing the custodian. In my opinion, the submission is thoroughly misconceived. If one looks to the order dated 4.4.1995, wherein wide allegations made against the society or the Management Committee were stated and that explanation was called for. Even on the spot investigation was carried out and statements were recorded, which would go to show that each and every possible opportunity was provided to the Managing Committee before appointing the custodian and in the facts of the present case, principle propounded by the Division Bench of the Gujarat High Court in the case of AMRELI DISTRICT SALES & PURCHASE UNION v. STATE OF GUJARAT reported in 25(2) GLR 1244, can be said to have been fully complied with as the power of appointment of custodian was exercised after giving opportunity to the society and its managing committee. Such is the finding reached by the lower appellate authority as well as by this court and in that view of the matter, there is no substance in this petition.

5. In the result, the present Spl. Civil Application fails. The same is dismissed. Rule is discharged. There shall be no order as to costs.

6. The operation of the judgment and order of this court is stayed for a period of 15 days at the request of the Mr. B.S. Patel and hearing Mr. B.M. Mangukia, both state to the court that the present controversy between the parties may be settled.

